

Cite as 2009 Ark. App. 759

**ARKANSAS COURT OF APPEALS**

DIVISION IV  
No. CA09-366

TRUDY MATLOCK,

APPELLANT

V.

JAMES MATLOCK,

APPELLEE

**Opinion Delivered** November 11, 2009

APPEAL FROM THE BOONE  
COUNTY CIRCUIT COURT,  
[NO. DR-04-296-3]

HONORABLE JOHN R. PUTMAN,  
JUDGE

AFFIRMED

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**KAREN R. BAKER, Judge**

Appellant Trudy Matlock challenges the trial court’s distribution of marital property claiming two points of error: (1) The trial court erred in not distributing the remaining personal property; (2) The trial court abused its discretion in the amount of alimony and the length of the alimony award. The crux of her argument is that the trial court erred in not distributing certain items omitted from the parties’ agreement and in establishing the parameters of the award of alimony, asserting that the trial court’s failure to provide for the allocation of debts and items omitted from the parties’ agreement rendered the parties’ agreement for the distribution of certain items inequitable. We find no error and affirm.

At the time of the divorce, Trudy was sixty-two years old. She and appellee James Matlock were married for thirty-eight years when James filed for divorce. James sued for

general indignities and Trudy counter-claimed for general indignities, later amended to include the grounds of adultery. The divorce was subsequently granted on grounds of separation for eighteen months.

During the marriage, James had acquired a one-half ownership interest in two businesses in the trucking industry. The parties also had a one-half interest in a farm in Marion County, a house in Harrison sold during the separation, a marital home in Harrison, various vehicles, cattle, assets of bank accounts, insurance, a mutual fund, and credit card debt.

The parties reached a settlement agreement on the value of Trudy's interests in the two businesses, the farm, the marital home, the cattle, the bank counts, insurance and mutual funds. James agreed and was ordered to pay Trudy \$412,500 for her interest in the two trucking companies, \$67,000 for her interest in the farm, one-half of the bank accounts, cash surrender of the insurance policy, a retirement account and twenty-four percent of the proceeds from the sale of approximately eighty heifers. Trudy received the marital home liable for the mortgage with James being credited with \$5500 in his equity in the marital home.

Although appellant argues in her first point that the trial court failed to distribute or consider "the marital debt and the boat, motor and trailer," the decree specifically stated that "each party will keep the personal property in his or her possession . . . ." Furthermore,

despite the argument in her brief to the contrary, the trial court identified appellee as the owner of the bass boat, motor and trailer and specified that those items were in the possession of appellee. Accordingly, appellant's argument regarding those items is inconsistent with the record, and we find no merit to that aspect of her claim.

On the issue of alimony, the court awarded Trudy temporary spousal support in the amount of \$2500 plus a \$750 monthly house payment. This temporary award was based upon Trudy's monthly expenses totaling \$2991.85 excluding the mortgage, and the testimony of CPA Larry Keeter that James had a net income available to him of \$14,473 monthly.

At the final hearing, Trudy testified that she had been completely dependent upon James financially since 1984, that she had broken her back twenty-five years before with continuing medical needs and limitations from the injury, and that she had met the shortfall in her monthly expenses by accumulating credit card debt. Larry Keeter testified that after examining James's corporate and personal tax returns and pursuant to Administrative Order Number 10, he calculated that James had a net available income of \$15,300 a month. James testified that his affidavit of financial means showed his monthly income as \$3100 and in order to pay his wife the settlement he would have to borrow the money at a repayment cost of \$6000 a month. He also stated that he does not have any idea what he makes and what it costs him to live.

Seven and one-half months after the trial, the judge granted the divorce approving the

settlement agreement and granted alimony in the amount of \$1800 to end November 2010. He denied retroactive spousal support and ordered each party to pay their own attorney's fees and costs. The court took no action on the credit card debt.

Debts of the parties have always been a circumstance to be considered in divorce cases in awarding alimony. *Yohe v. Yohe*, 238 Ark. 642, 383 S.W.2d 665 (1964); *Shirey v. Shirey*, 87 Ark. 175, 112 S.W. 369 (1908). In fact, our supreme court has opined that it would be unrealistic for a judge to refuse to consider the debts of the parties in deciding a divorce case. *See Hackett v. Hackett*, 278 Ark. 82, 643 S.W.2d 560 (1982). Debts incurred by the parties regarding marital property can be ordered to be settled as between the parties. *Goodlett v. Goodlett*, 209 Ark. 297, 190 S.W.2d 14 (1945). Obligations jointly made by the parties can be ordered to be settled, as between the parties. *Riegler v. Riegler*, 243 Ark. 113, 419 S.W.2d 311 (1967). An award of realty to the wife, silent as to who shall pay the mortgage, is an award subject to the mortgage. *Crosser v. Crosser*, 121 Ark. 64, 180 S.W. 337 (1915). But the fact that marital debts may be considered does not mean the judge must divide the debts. *See Hackett, supra*. He may leave the parties as he found them, obligated individually or jointly to the creditor who is not ordinarily a party to a divorce and cannot therefore be bound by an order regarding the parties' debts. *Id.*

In this case, the trial judge heard the evidence regarding the debt and accepted the parties' settlement agreement, which was silent as to the distribution of the debt. A review

of the record indicates that appellant never identified the distribution of the debt as an issue to be tried. Appellate courts will not consider arguments such as these not raised below or ruled upon in its de novo review of the record. *Taylor v. Taylor*, 369 Ark. 31, 250 S.W.3d 232 (2007). Under these circumstances, the trial court did not err in failing to specifically address any impact that the allocation of debt would have upon the division of property and award of alimony proceedings or to specifically identify the equities affected by leaving the parties as he found them. *See Means v. Means*, 58 Ark. App. 42, 49, 946 S.W.2d 188, 191 (1997); *see also Urban Renewal Agency v. Hefley*, 237 Ark. 39, 371 S.W.2d 141 (1963) (The purpose of pleadings is to notify the court and other parties of the issues to be tried.); *Bachus v. Bachus*, 216 Ark. 802, 227 S.W.2d 439 (1950) (In the absence of such a request, it was not error to not award alimony.).

While the trial court did not err by not specifying the impact that the allocation of debt would have upon the division of property and award of alimony proceedings, we cannot say that the trial court did not consider that impact in establishing the parameters of the alimony award. In arguing that the trial court abused its discretion in the amount of alimony and the length of the alimony award, appellant compares her detailed financial needs with the “total lack of concern by James Matlock who did not know his income or his expenses....” However, James testified that he would have to borrow the money to satisfy his obligation to Trudy under the agreement for division of marital property. He further testified that his

monthly payment on that loan would be over six thousand dollars for a ten-year period, and that he anticipated the sale of the farm from his marital property award to ensure he met that obligation because of a decrease in his income.

On appeal, Trudy skillfully explains the criteria considered in determining the amount of alimony award and the comparison of the parties' resources and needs and argues articulately that the trial court's award of alimony failed to meet the purpose of alimony—to rectify economic imbalances in earning power and standard of living in light of the particular facts of each case. *See Kuchmas v. Kuchmas*, 368 Ark. 43, 243 S.W.3d 270 (2006). However, given that alimony and property divisions are complementary devices that a trial judge employs to make the dissolution of a marriage as equitable as possible, *Evtimov v. Milanova*, 2009 Ark. App. 208, --- S.W.3d ---, we cannot say that the trial court erred in its award. While Trudy anticipates that income generated from her share of the marital property will be insufficient to allow her to maintain her standard of living, James similarly anticipates the need to liquidate a significant, income producing, marital asset awarded to him in order to satisfy his obligation pursuant to the parties' agreement. The circuit court has the discretion to award alimony that is reasonable under the circumstances. *Taylor v. Taylor*, 369 Ark. 31, 250 S.W.3d 232 (2007). An abuse of discretion means discretion improvidently exercised, *i.e.*, exercised thoughtlessly and without due consideration. *Evtimov, supra*. Our supreme court and this court have emphasized in the past that the circuit court is in the best

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position to view the needs of the parties in connection with an alimony award. *See Taylor, supra*. We cannot say that the trial court exercised its discretion improvidently, thoughtlessly and without due consideration under these circumstances.

Accordingly, we find no error and affirm.

GRUBER and BROWN, JJ., agree.